

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

JOE BOB LAKE, AS PERSONAL REPRESENTATIVE OF THE ESTATE
OF JULIA LAKE AND AS AN INDIVIDUAL,

Appellant,

v.

FRANK B.W. MCCOLLUM,

Respondent.

DOCKET NUMBER WD72232

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: November 9, 2010

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Charles E. Atwell, Judge

APPELLATE JUDGES

Division Two: Joseph M. Ellis, Presiding Judge, and Alok Ahuja and Karen
King Mitchell, Judges

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS, WESTERN DISTRICT

JOE BOB LAKE, AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JULIA LAKE AND AS AN)
INDIVIDUAL,)
)
Appellant,)
v.)
)
FRANK B.W. MCCOLLUM,)
)
Respondent.)

WD72232

Jackson County

Before Division Two Judges:

Joseph M. Ellis, Presiding Judge, and
Alok Ahuja and Karen King Mitchell, Judges

This is a post-judgment interest case. The issue is whether post-judgment interest runs from a judgment that awarded no money to the plaintiff when the judgment is reversed on appeal with instructions to enter judgment for the plaintiff pursuant to the jury's verdict. We hold that it does not. Therefore, we affirm.

AFFIRMED.

Division Two holds:

Julia and Joe Bob Lake (collectively, "Lake") sued Dr. Sharon Prohaska. Prohaska twice moved for directed verdict. The trial court deferred ruling until after trial. The jury rendered a verdict in favor of Lake. On September 12, 2005, the circuit court entered what it denominated as a "judgment." The "judgment" reflected the jury's verdict but stated that it would resolve Prohaska's motions for directed verdict with the post-trial motions.

Prohaska filed a motion for judgment notwithstanding the verdict (“JNOV”). On January 6, 2006, the court granted Prohaska’s motion for JNOV and, accordingly, entered judgment for Prohaska. In its January 6, 2006 judgment, the court found that the September 12, 2005 “judgment” was a nullity because it deferred ruling on Prohaska’s motions for directed verdict and thus did not decide all issues, as a true judgment is required to do.

Lake appealed the January 6, 2006 judgment. The Supreme Court held that the September 12, 2005 docket entry (which was denominated “judgment”) was not a judgment. *Lake v. McCollum*, 257 S.W.3d 614, 616 (Mo. banc 2008) (“*Lake I*”). The Supreme Court retransferred the appeal to this court to decide whether the JNOV was properly granted. *Id.* We reversed. *Lake v. McCollum*, 295 S.W.3d 529, 537 (Mo. App. W.D. 2009) (“*Lake II*”). Further, we remanded to the circuit court to enter judgment for Lake in accordance with the jury’s verdict. *Id.*

Lake argued below that he was entitled to interest on the principal amount, running from January 6, 2006 (the date the trial court granted the JNOV and entered judgment for Prohaska) forward. The circuit court entered a judgment for post-judgment interest, running from November 17, 2009, the date our mandate issued in *Lake II*. Lake appeals.¹

Lake argues that, under section 408.040,² post-judgment interest runs from the judgment of January 6, 2006. We disagree.

Section 408.040 is unambiguous: if no money is due upon a judgment, then post-judgment interest does not run on it. Since no money was due upon the judgment of January 6, 2006, post-judgment interest did not run on it. See *Johnson v. BFI Waste Sys. of N. Am., Inc.*, 162 S.W.3d 127, 129 (Mo. App. E.D. 2005).

Lake also argues that post-judgment interest should run from the docket entry of September 12, 2005, because it was a “judgment” or “order” under section 408.040. We disagree.

Post-judgment interest runs from the date the circuit court entered judgment. *Lindquist v. Mid Amer. Orthopaedic Surgery, Inc.*, 224 S.W.3d 593, 595 (Mo. banc 2007); *Kan. City Power & Light Co. v. Bibb & Assocs.*, 197 S.W.3d 147, 161 (Mo. App. W.D. 2006); *Johnson*, 162 S.W.3d at 129. The Supreme Court of Missouri has already held that the docket entry of September 12, 2005, was not a judgment because it did not decide all issues of the case. *Lake I*, 257 S.W.3d at 616. Therefore, post-judgment interest did not run from the docket entry of September 12, 2005. *Lindquist*, 224 S.W.3d at 595.

No money was due upon the judgment of January 6, 2006, and therefore post-judgment interest did not run on it. The docket entry of September 12, 2005, was not a judgment, and

¹ Prohaska does not cross-appeal the issue of awarding post-judgment interest from the date of our mandate as opposed to the date of the circuit court’s judgment for the plaintiff *pursuant* to our mandate, and we therefore do not address that issue.

² All citations to section 408.040 are to RSMo 2000, as updated through the 2001 cumulative supplement.

therefore post-judgment interest did not run on it. Accordingly, we affirm the circuit court's judgment.

Opinion by: Karen King Mitchell, Judge

November 9, 2010

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